

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

AETNA LIFE INSURANCE COMPANY	§	
	§	
	§	
VS.	§	CIVIL ACTION NO. 4:15-cv-491
	§	
ROBERT A. BEHAR, M.D.; NORTH	§	
CYPRESS MEDICAL CENTER	§	
OPERATING COMPANY, LTD.; and,	§	
NORTH CYPRESS MEDICAL CENTER	§	
OPERATING COMPANY GP, LLC	§	

DEFENDANTS' ANSWER TO AETNA'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGES OF SAID COURT:

COMES NOW Defendants Robert A. Behar, MD, North Cypress Medical Center Operating Company, Ltd. and North Cypress Medical Center Operating Company GP, LLC (collectively "Defendants") and file their Answer to Aetna Life Insurance Company's ("Aetna") Original Complaint (Dkt. 1) and show the following:

I.

INTRODUCTION

1. Defendants deny the allegations contained in paragraph 1 of Plaintiff's Complaint.
2. Defendants deny the allegations contained in paragraph 2 of Plaintiff's Complaint.
3. Defendants deny the allegations contained in paragraph 3 of Plaintiff's Complaint.
4. Defendants deny the allegations of paragraph 4 of Plaintiff's Complaint except for that the fact that North Cypress Medical Center is a non-participating out-of-network medical facility provider.
5. Defendants deny the allegations contained in paragraph 5 of Plaintiff's Complaint.
6. Defendants deny the allegations contained in paragraph 6 of Plaintiff's Complaint.

7. Defendants deny the allegations contained in paragraph 7 of Plaintiff's Complaint.
8. Defendants deny the allegations contained in paragraph 8 of Plaintiff's Complaint.

II.

PARTIES

9. Defendants admit the allegations contained in paragraph 9 of Plaintiff's Complaint.
10. Defendants admit the allegations contained in paragraph 10 of Plaintiff's Complaint.
11. Defendants admit the allegations contained in paragraph 11 of Plaintiff's Complaint.
12. Defendants admit the allegations contained in paragraph 12 of Plaintiff's Complaint.

III.

JURISDICTION AND VENUE

13. Defendants deny the allegations contained in paragraph 13 of Plaintiff's Complaint.
14. Defendants deny the allegations contained in paragraph 14 of Plaintiff's Complaint.
15. Defendants deny the allegations contained in paragraph 15 of Plaintiff's Complaint.

IV.

FACTUAL BACKGROUND

16. Defendants deny the allegations contained in paragraph 16 of Plaintiff's Complaint.
17. Defendants deny the allegations contained in paragraph 17 of Plaintiff's Complaint.
18. Defendants deny the allegations contained in paragraph 18 of Plaintiff's Complaint.
19. Defendants deny the allegations contained in paragraph 19 of Plaintiff's Complaint.
20. Defendants deny the allegations contained in paragraph 20 of Plaintiff's Complaint.
21. Defendants deny the allegations contained in paragraph 21 of Plaintiff's Complaint.
22. Defendants deny the allegations contained in paragraph 22 of Plaintiff's Complaint.
23. Defendants deny the allegations contained in paragraph 23 of Plaintiff's Complaint.

24. Defendants deny the allegations contained in paragraph 24 of Plaintiff's Complaint.
25. Defendants deny the allegations contained in paragraph 25 of Plaintiff's Complaint.
26. Defendants deny the allegations contained in paragraph 26 of Plaintiff's Complaint.
27. Defendants deny the allegations contained in paragraph 27 of Plaintiff's Complaint.
28. Defendants deny the allegations contained in paragraph 28 of Plaintiff's Complaint.
29. Defendants deny the allegations contained in paragraph 29 of Plaintiff's Complaint.
30. Defendants deny the allegations contained in paragraph 30 of Plaintiff's Complaint.
31. Defendants deny the allegations contained in paragraph 31 of Plaintiff's Complaint.
32. Defendants deny the allegations contained in paragraph 32 of Plaintiff's Complaint.
33. Defendants deny the allegations contained in paragraph 33 of Plaintiff's Complaint.
34. Defendants deny the allegations contained in paragraph 34 of Plaintiff's Complaint.
35. Defendants deny the allegations contained in paragraph 35 of Plaintiff's Complaint.
36. Defendants deny the allegations contained in paragraph 36 of Plaintiff's Complaint.
37. Defendants deny the allegations contained in paragraph 37 of Plaintiff's Complaint.
38. Defendants deny the allegations contained in paragraph 38 of Plaintiff's Complaint.
39. Defendants deny the allegations contained in paragraph 39 of Plaintiff's Complaint.
40. Defendants deny the allegations contained in paragraph 40 of Plaintiff's Complaint.
41. Defendants deny the allegations contained in paragraph 41 of Plaintiff's Complaint.
42. Defendants deny the allegations contained in paragraph 42 of Plaintiff's Complaint.
43. Defendants deny the allegations contained in paragraph 43 of Plaintiff's Complaint.
44. Defendants deny the allegations contained in paragraph 44 of Plaintiff's Complaint.
45. Defendants deny the allegations contained in paragraph 45 of Plaintiff's Complaint.
46. Defendants deny the allegations contained in paragraph 46 of Plaintiff's Complaint.

- 47. Defendants deny the allegations contained in paragraph 47 of Plaintiff's Complaint.
- 48. Defendants deny the allegations contained in paragraph 48 of Plaintiff's Complaint.
- 49. Defendants deny the allegations contained in paragraph 49 of Plaintiff's Complaint.
- 50. Defendants deny the allegations contained in paragraph 50 of Plaintiff's Complaint.
- 51. Defendants deny the allegations contained in paragraph 51 of Plaintiff's Complaint.
- 52. Defendants deny the allegations contained in paragraph 52 of Plaintiff's Complaint.
- 53. Defendants deny the allegations contained in paragraph 53 of Plaintiff's Complaint.
- 54. Defendants deny the allegations contained in paragraph 54 of Plaintiff's Complaint.
- 55. Defendants deny the allegations contained in paragraph 55 of Plaintiff's Complaint.
- 56. Defendants deny the allegations contained in paragraph 56 of Plaintiff's Complaint.
- 57. Defendants deny the allegations contained in paragraph 57 of Plaintiff's Complaint.
- 58. Defendants deny the allegations contained in paragraph 58 of Plaintiff's Complaint.
- 59. Defendants deny the allegations contained in paragraph 59 of Plaintiff's Complaint.
- 60. Defendants deny the allegations contained in paragraph 60 of Plaintiff's Complaint.
- 61. Defendants deny the allegations contained in paragraph 61 of Plaintiff's Complaint.
- 62. Defendants deny the allegations contained in paragraph 62 of Plaintiff's Complaint.

V.

CLAIMS FOR RELIEF

- 63. Defendants deny the allegations contained in paragraph 63 of Plaintiff's Complaint.
- 64. Defendants deny the allegations contained in paragraph 64 of Plaintiff's Complaint.
- 65. Defendants deny the allegations contained in paragraph 65 of Plaintiff's Complaint.
- 66. Defendants deny the allegations contained in paragraph 66 of Plaintiff's Complaint.
- 67. Defendants deny the allegations contained in paragraph 67 of Plaintiff's Complaint.

- 68. Defendants deny the allegations contained in paragraph 68 of Plaintiff's Complaint.
- 69. Defendants deny the allegations contained in paragraph 69 of Plaintiff's Complaint.
- 70. Defendants deny the allegations contained in paragraph 70 of Plaintiff's Complaint.
- 71. Defendants deny the allegations contained in paragraph 71 of Plaintiff's Complaint.
- 72. Defendants deny the allegations contained in paragraph 72 of Plaintiff's Complaint.
- 73. Defendants deny the allegations contained in paragraph 73 of Plaintiff's Complaint.
- 74. Defendants deny the allegations contained in paragraph 74 of Plaintiff's Complaint.
- 75. Defendants deny the allegations contained in paragraph 75 of Plaintiff's Complaint.
- 76. Defendants deny the allegations contained in paragraph 76 of Plaintiff's Complaint.
- 77. Defendants deny the allegations contained in paragraph 77 of Plaintiff's Complaint.
- 78. Defendants deny the allegations contained in paragraph 78 of Plaintiff's Complaint.
- 79. Defendants deny the allegations contained in paragraph 79 of Plaintiff's Complaint.
- 80. Defendants deny the allegations contained in paragraph 80 of Plaintiff's Complaint.
- 81. Defendants deny the allegations contained in paragraph 81 of Plaintiff's Complaint.
- 82. Defendants deny the allegations contained in paragraph 82 of Plaintiff's Complaint.
- 83. Defendants deny the allegations contained in paragraph 83 of Plaintiff's Complaint.
- 84. Defendants deny the allegations contained in paragraph 84 of Plaintiff's Complaint.
- 85. Defendants deny the allegations contained in paragraph 85 of Plaintiff's Complaint.
- 86. Defendants deny the allegations contained in paragraph 86 of Plaintiff's Complaint.

VII.

ATTORNEYS FEES

- 87. Defendants deny the allegations contained in paragraph 87 of Plaintiff's Complaint.
- 88. Defendants deny the allegations contained in paragraph 88 of Plaintiff's Complaint.

VII.

CONDITION PRECEDENT

89. Defendants deny the allegations contained in paragraph 89 of Plaintiff's Complaint.

VIII.

JURY DEMAND

90. To the extent necessary, Defendants deny the allegations contained in paragraph 90 of Plaintiff's Complaint.

IX.

PRAYER

Defendants deny the requests for relief contained in the Prayer of Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

Defendants assert the following Affirmative Defenses to Counter-Plaintiff's Aetna's claims pursuant to Rule 8(c), Fed. R. Civ. P.:

1. Aetna's claims are barred by waiver.
2. All of Aetna's State law claims, common law claims and causes of action are conflict pre-empted by ERISA, § 514, 29 U.S.C. § 1144.
3. All of Aetna's State law claims and common law claims are completely preempted by ERISA, § 502, 29 U.S.C. § 1132.
4. Aetna fails to state claims upon which relief can be granted.
5. Aetna lacks standing.
6. Aetna's ERISA claims are barred by the applicable and/or analogous statutes of limitations.

7. All of Aetna's State Court causes of action, both common law and statutory law, are barred by the applicable statutes of limitations and/or limitations.

8. Aetna's claims are barred by unclean hands.

9. Aetna's claims are barred by laches.

10. Aetna is estopped in every manner from seeking any remedy or damages from the Defendants.

11. Aetna has not suffered any damages; alternatively, Aetna has suffered only damages caused by its own conduct.

12. Aetna has waived any claims that it may have had against Defendants.

13. Aetna's claims violate public policy.

14. Aetna is barred from seeking punitive/exemplary damages.

15. Aetna is barred from seeking attorney's fees.

16. All of Aetna's claims insofar as they arise under state law are preempted by ERISA.

17. Aetna's claims are barred because of Aetna's own fraudulent and wrongful conduct.

18. In the alternative, Aetna's alleged violations of statutes are unenforceable because these statutes do not provide for private causes of action.

19. Aetna's claims are barred because of its own fraud.

20. Aetna's quasi-contractual causes of action are barred for failure of consideration.

21. Any state law claims asserted by Aetna relate to such ERISA plans and are preempted by ERISA.

22. Aetna's remedies for any alleged acts or omissions are limited to those afforded by ERISA, as Aetna's claims are governed by ERISA.

23. Aetna's damages, if any be proved, should be reduced by the amount attributable to the Plaintiffs' failure to mitigate damages.

24. On information and belief, the Aetna's claims are barred, in whole or in part, by the doctrines of estoppel, waiver, laches, applicable limitations periods, and/or unclean hands.

25. Aetna failed to perform all conditions necessary to recover from the Defendants in this lawsuit.

26. Aetna's claims fail due to lack of standing.

27. Aetna fails to state a claim for which relief may be granted.

28. Any damages allegedly sustained by the Aetna, if any be proved, were caused in whole or in part by the culpable conduct of Aetna or third parties or instrumentalities over whom the Defendants had no right or control and, therefore, the amount of any damages otherwise recoverable by Aetna against the Defendants should be extinguished or reduced in comparative proportion to the culpable conduct of Aetna or any other third parties.

Jury Demand

29. Defendants make a demand for trial by jury on all issues so triable.

WHEREFORE, PREMISES CONSIDERED, Defendants ROBERT A. BEHAR, M.D., NORTH CYPRESS MEDICAL CENTER OPERATING COMPANY, LTD. and NORTH CYPRESS MEDICAL CENTER OPERATING COMPANY GP, LLC pray that Plaintiff Aetna Life Insurance Company's Original Complaint be dismissed with prejudice at Plaintiff's cost or, alternatively, that this Answer be deemed good and sufficient, and that, after due proceedings had, there be Judgment herein in favor of Defendants and against Plaintiff, AETNA LIFE INSURANCE COMPANY, dismissing Plaintiff's Original Complaint with prejudice, and awarding Defendants all

of its damages together with reasonable attorneys' fees and all costs and expenses of these proceedings, as well as such other declaratory and equitable relief as justice requires.

Respectfully submitted,

By: /s/ J. Douglas Sutter
J. DOUGLAS SUTTER
State bar No. 19525500
Federal ID No. 3791

ATTORNEY-IN-CHARGE FOR DEFENDANTS

OF COUNSEL:

KELLY, SUTTER & KENDRICK, P.C.
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(713) 595-6000 – Telephone
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CERTIFICATE OF SERVICE

I certify that on this the 11th day of August, 2015, a true and correct copy of the foregoing Defendants' Answer to Aetna's Original Complaint was served on all counsel of record via ECF and email.

/s/ J. Douglas Sutter
J. DOUGLAS SUTTER